

DG 06-107

NATIONAL GRID plc, NATIONAL GRID USA and KEYSpan CORPORATION

Petition for Approval of Merger Transaction

Prehearing Conference Order

ORDER NO. 24,690

October 27, 2006

APPEARANCES: Alexandra E. Blackmore, Esq. and Thomas G. Robinson, Esq. of National Grid and Donald Pfundstein, Esq., of Gallagher, Callahan and Gartrell, PC, for National Grid; Steven V. Camerino, Esq., of McLane, Graf, Raulerson and Middleton, PA, and Thomas O'Neill, Esq., of KeySpan Energy Delivery New England, for EnergyNorth Natural Gas, Inc.; Shawn J. Sullivan, Esq., of Cook and Molan PA, for United Steelworkers of America, Local 12012-3; Meredith A. Hatfield, Esq. of the Office of Consumer Advocate on behalf of residential ratepayers; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On August 10, 2006, National Grid plc and its subsidiary, National Grid USA (Grid), and EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (ENGI) (collectively, the "joint petitioners") jointly filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking approval pursuant to RSA 369:8 and RSA 374:33 of a merger transaction that would result in ENGI becoming a wholly owned indirect subsidiary of Grid. ENGI serves approximately 82,000 gas customers in New Hampshire. Grid serves approximately 41,000 electric customers in New Hampshire through its subsidiary Granite State Electric Company d/b/a National Grid.

On August 18, 2006, the Office of Consumer Advocate (OCA) filed a notice of intent to participate in this docket on behalf of residential utility consumers pursuant to RSA 363:28, II. On September 7, 2006, Commission Staff (Staff) submitted a proposed procedural schedule. On September 12, 2006, the Commission issued an Order of Notice scheduling a prehearing

conference, which was held on October 3, 2006. The United Steelworkers of America, Local 12012-3 (Local 12012-3) and the Utility Workers Union of America, AFL-CIO (Utility Workers Union) filed timely petitions to intervene. One consumer comment opposing the proposed merger transaction was filed with the Commission.

On October 10, 2006, as requested at the Prehearing Conference, Grid filed a letter summarizing the regulatory approvals necessary to close the merger transaction and the status of the approvals. On October 18, 2006, Staff filed a letter regarding the proposed procedural schedule and enclosed a letter on behalf of the Utility Workers Union providing additional information regarding the basis for its intervention request and plans for participation.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. Joint Petitioners

The joint petitioners maintained that the proposed merger meets the statutory requirements for approval and will provide benefits for their customers. The joint petitioners expect the merger to produce company-wide synergy savings of approximately \$200 million per year, with approximately \$12.8 million of the savings allocated to ENGI over the next ten years. They are committing to freeze ENGI's current delivery rates for at least a year after the closing of the merger and to exclude rate recovery of the acquisition premium associated with the merger. In addition, they expect the merger to create gas supply benefits that will be reflected in ENGI's cost of gas rates and they are proposing to improve ENGI's response to customer telephone calls by updating the service quality standards at the time of ENGI's next delivery rate case. Finally, they expect that the merger will allow them to avoid capital investments and billing and information systems costs that would otherwise have to be incurred by stand-alone companies.

The joint petitioners partially objected to the petition to intervene filed by the Utility Workers Union. They stated that they have some concerns about the interest of the union given that it does not have any members who are currently employed in New Hampshire. The joint petitioners suggested that the participation of the Utility Workers Union be limited.

B. United Steelworkers of America, Local 12012-3

In support of its petition to intervene, Local 12012-3 stated that it is the duly authorized collective bargaining representative for certain ENGI employees and that the union members employed by ENGI are citizens of New Hampshire. Local 12012-3 maintained that the union and its members are able to address issues of safety and efficiency as they relate to the natural gas industry and that the members have a substantial financial interest in the evolution of the industry. Local 12012-3 took no preliminary position on the merits of the filing.

C. Utility Workers Union

The Utility Workers Union did not appear at the Prehearing Conference. In its petition to intervene and in its subsequent letter, the Utility Workers Union stated that the proceeding raises important issues with respect to the quality and reliability of service to be provided to New Hampshire customers as well as impacts on the workforces of both companies. It maintained that the investigation of the filing should broadly consider all aspects of the proposal, including whether any approval should be conditioned to address potential adverse impacts.

The Utility Workers Union stated that it has 288 members living in New Hampshire, 66 of whom are retired and 222 of whom are employed by Grid, KeySpan Corporation or other companies in Massachusetts. According to the union, approval of the proposed transaction will affect the livelihoods, employment and safety of the union members. The Utility Workers Union contended that staffing and service cutbacks are the most likely outcome of any unconditional

approval by the Commission. The union asserted that its members have an interest in safe, reliable utility service at a reasonable cost and that this interest is likely to be affected by the proceeding in that the proposed merger could result in a decline in service quality unless appropriate conditions to any approval are imposed. In addition, the Utility Workers Union argued that its members currently working for Grid or KeySpan Corporation in Massachusetts may be temporarily dispatched or permanently transferred to operating entities in New Hampshire and that its members working for other companies may be temporarily dispatched to work with the New Hampshire operations or hired by a New Hampshire affiliate. Accordingly, the union contended that the outcome of the proceeding may affect the living and working conditions of union members both as ratepayers and as potential employees of the New Hampshire operations of the merged company. The Utility Workers Union requested full intervention rights.

D. OCA

The OCA stated that it will be focusing closely on customer interests, including rates, customer service, quality of service and the issue of jobs remaining in New Hampshire.

E. Staff

Staff stated that its positions are not fully developed yet. However, Staff stated as a preliminary matter that the petition itself falls short of demonstrating that the proposed merger will not have an adverse impact on rates, terms, service or operation of the New Hampshire utilities involved in the transaction. Thus, according to Staff, further proceedings are appropriate pursuant to RSA 369:8, II (b). Staff stated it has reached an agreement with the joint petitioners relating to further proceedings in this docket under which the issue of adverse impact within the meaning of RSA 369:8, II (b) would be deferred pending the Commission's ultimate resolution

of all issues in the docket, notwithstanding any provisions entitling the joint petitioners to preliminary determinations under RSA 369:8, II (b).

III. PROCEDURAL SCHEDULE

Following the Prehearing Conference, the parties and Staff conducted a technical session and agreed that at the outset the procedural schedule proposed by Staff in its September 7 filing and subsequently published in the Order of Notice is appropriate. The proposed schedule is inconsistent with certain deadlines established in RSA 369:8, II, (b) and the proposal is therefore treated as a proposed waiver of certain provisions of the statute. *See Public Service Company of New Hampshire*, 85 NH PUC 125, 126-127, Order No. 23,432 (2000). We have reviewed the proposed procedural schedule and we find it, and the proposed waiver, to be reasonable and in the public interest.¹ Accordingly, we approve the following procedural schedule:

Rolling data requests by Staff/intervenors	October 3, 2006 through October 17, 2006
Deadline for responses	October 31, 2006
Technical Session	November 9, 2006
Rolling data requests by Staff/intervenors -2 nd round	November 9, 2006 through November 17, 2006
Deadline for responses	December 1, 2006
Tech Session/Settlement Discussions	December 14, 2006
Staff/intervenor testimony	January 5, 2007
Rolling data requests by Petitioners	January 5, 2007 through January 12, 2007
Deadline for responses	January 23, 2007
Settlement Conference	January 25, 2007
Rebuttal testimony by Petitioners	February 1, 2007
Hearing on merits	February 6, 2007, February 7, 2007 and February 8, 2007
Post hearing briefs	March 2, 2007

¹ The Commission recognizes that it is possible that the procedural schedule may have to be modified as future circumstances dictate, including the need to coordinate the Commission's decision with those of other regulatory jurisdictions, and in particular the decisions of the New York Public Service Commission.

IV. Intervention Petitions

Both Local 12012-3 and the Utility Workers Union have an interest in the outcome of this case because there is a substantial possibility that the merger transaction could affect the employment status of members of each. We note the objection to the intervention of the Utility Workers Union on the ground that none of its members currently work in New Hampshire and, thus, the union can only represent that its members *may* be affected by the outcome of the proceeding. However, the relevant standard allows a party to intervene based on impacts that are uncertain. *See* RSA 541-A:32, I (b) (requiring prospective intervenors to state “facts demonstrating that the petitioner’s rights, duties, privileges, immunities or other substantial rights *may* be affected by the proceeding”) (emphasis added).

However, the statutory provisions governing intervention allow us to impose reasonable limitations on the scope of a party’s participation as long as they are not “so extensive as to prevent the intervenor from protecting the interest which formed the basis of the intervention.” RSA 541-A:32, III and IV. In particular, we may limit an intervenor’s participation to “designated issues in which the intervenor has a particular interest” and we may require two or more intervenors to combine their presentations of evidence and argument, cross-examination and other participation in the proceedings. *Id.* at III(a) and (c). The references to service quality issues by the Utility Workers Union notwithstanding, it is clear that the interest of both unions is rooted in protecting the interests of their members whose employment may be affected by the transaction. We therefore require these two parties to coordinate their participation regarding the development and presentation of evidence and to combine their presentations at hearing.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule set forth herein is approved; and it is

ORDERED, that to the extent that the procedural schedule is inconsistent with RSA 369:8, II (b), the joint petitioners' waiver of their procedural rights under the statute is also approved; and it is

FURTHER ORDERED, that the pending petitions to intervene are granted on a limited basis as set forth above.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of October, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary